

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

MARGARET MARSHALL

Chief Justice

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1. Court Submitting Rules for Approval:

IOLTA Committee

2. Date Rules Submitted for Approval:

February 4, 2009, November 4, 2008

3. Date Approved and Promulgated by the Supreme Judicial Court:

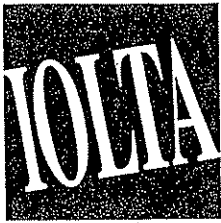
May 26, 2009

4. Rules or Rules, or Amendments Thereto, Approved and Promulgated:

Amendments to IOLTA Guidelines

Effective date - July 1, 2009

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(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)



**MASSACHUSETTS  
IOLTA  
COMMITTEE**

7 Winthrop Square  
3rd Floor  
Boston, MA 02110-1245

617 • 723 • 9093  
617 • 367 • 8815 (Fax)  
[www.maiolta.org](http://www.maiolta.org)

Lisa C. Wood  
*Chair*  
Boston

Miriam H. Babin  
New Bedford

John W. Delaney  
Boston

Laurence M. Johnson  
Boston

Antoinette E. M. Leoney  
Boston

Marjorie H. O'Reilly  
Newton

Martha Rush O'Mara  
Melrose

Richard A. Soden  
Boston

Kenneth J. Vacovec  
Newton

Jayne Tyrrell  
*Director*

November 4, 2008

Honorable John M. Greaney  
*Chair*  
SJC Rules Committee  
John Adams Courthouse  
One Pemberton Square  
Boston, MA 02108

RE: Proposed IOLTA Guideline Changes

Dear Justice Greaney:

I write on behalf of the Massachusetts IOLTA Committee to request approval of amendments to the Interest on Lawyers Trust Accounts Committee Guidelines (Guidelines) pertaining to the Stabilization Fund. In Section 5(a), the Committee proposes clearer language about proper investment of IOLTA funds reserved in a stabilization fund. In Sections 5(d), 5(e) and 4(c), the Committee proposes a more complete Guideline regarding the amounts of funds that may be reserved by and how such funds are to be accounted for by the three charities which receive IOLTA funds. In Sections 5(e), 5(f), 4(a) and 4(b), the Committee proposes related procedural changes to reflect the proposed new Guidelines.

The IOLTA Committee collects interest on lawyers trust accounts that would not otherwise generate interest for clients. It passes these revenues along to three charitable entities that make grants to assist the administration of justice and support legal aid to the poor. The IOLTA Committee periodically proposes Guidelines for adoption by this Court.

The IOLTA Committee began discussion of these particular proposed amendments in 2007. After extensive discussions within the Committee and with the three charitable entities that receive IOLTA funds (the Boston Bar Foundation, the Massachusetts Bar Foundation and the Massachusetts Legal Assistance Corporation), the Committee voted to ask the Court to adopt these proposed new Guidelines and amend the current Guidelines accordingly at a meeting on September 16, 2008.

**Background**

The accumulation, safekeeping and application of IOLTA funds in a Stabilization Fund have been the subject of a Guideline since the first Guidelines were adopted in 1990. See Section 5(d). For many years the

subject required little attention. But with gradual rises in revenue, the charitable entities began to build "rainy day" funds. Last year's dramatic jump in revenue (from \$17 million in 2006 to \$31 million in 2007) enlarged these fund reserves.

While some reserve has always seemed prudent, excessive reserves sacrifice support for the current legal needs of low income residents in favor of future support for future problems. Justice delayed too long is justice denied for today's neediest. When stabilization funds began to exceed current annual revenue in one entity, and to grow in another, the Committee decided to review its policy.

#### **Current Reserve Policy**

Mass. R. Prof. C., Rule 1.15 (g) (4):

This court shall appoint members of a permanent IOLTA Committee to fixed terms on a staggered basis. The representatives appointed to the committee shall oversee the operation of a comprehensive IOLTA program including:

(vi) establishment of standards for reserve accounts by the recipient charitable entities for the deposit of IOLTA funds which the charitable entity intends to preserve for future use;...

Pursuant to this authority, the current reserve Guideline was adopted in 1990 by the IOLTA Committee and approved by the SJC.

5. Stabilization Funds: A charity may, in its discretion, reserve IOLTA funds from current distribution to stabilize the amounts available for distribution for future years.

(a) All reserved funds must be invested in United States Treasury obligations or deposited in fully insured bank accounts.

\* \* \* \* \*

(d) No more than 25% of the IOLTA income received by a charity during that charity's fiscal year may be reserved during that year.

(e) A charity establishing a stabilization fund shall adopt criteria regarding the amounts to be reserved and the uses of the reserved funds including the circumstances under which the principal of the stabilization fund may be expended.

## **Discussion**

The first thing the Committee observed was that its Guideline was ambiguous. An entity was allowed to put aside up to 25% of current revenue, but the Guideline was unclear as to whether the stated 25% of current revenue represented the maximum total reserve allowed or just a cap on the amount of reserve that could be set aside annually. In other words, it was unclear as to whether there was a cap on the size of each charities' total reserve? Since the Committee believed the Guideline was not intended to allow reserves to grow indefinitely, the Committee decided to limit the size of reserves in a reasonable way.

The Committee considered the merits of large stabilization funds, particularly as buffers against years with severely reduced IOLTA revenues such as those experienced this year. Possible directives regarding the use of stabilization funds were weighed. The importance of discretion in grant-making philosophies at the three charitable entities was also acknowledged; one benefit of a large stabilization fund is that the entity's grant-making process is stabilized even while no grantee is assured of continued funding.

After consultation with the charitable entities, the Committee determined that the Guideline should embody three principles:

1. Each year a maximum of 25% of the IOLTA income received by a charity that year may be added to the reserve account,
2. Provided, however, that no charity may carry a reserve account of more than 50% of the average of the prior two years income received by that charity, and
3. Each charity has three years initially to comply with these new caps, and two years to comply with additional fluctuations that may occur as the average figure set forth in principle 2 changes.

These principles are incorporated in the revised Guideline set forth in Attachment 1.

Having established a limit to the reserve accounts, the Committee needed to set forth provisions dealing with possible excess reserves. New sections 5(e) and 5(f) establish the basic procedures the Committee will follow. In cases of excess reserves the Committee is authorized to reduce future grants to offset the surpluses, but has the discretion to waive such an action.

The Committee decided to clarify two other, related guidelines. Guideline 5(a) had an out of date and inadequate description of investment options for reserved funds. Guideline 4(a) and (b) did not require that the annual financial statements of the charitable entities report on the reserve accounts.

**Conclusion**

The IOLTA Committee respectfully requests approval of these changes to the IOLTA Guidelines. Please do not hesitate to call if you need further information. We look forward to the Court's response.

Very truly yours,



Lisa C. Wood, Chair  
Massachusetts IOLTA Committee

cc: Christine Burak

IOLTA Committee

Jayne Tyrrell

Attachment 1:

Proposed Revisions to the

Interest on Lawyers Trust Account Committee Guidelines:

5. Stabilization Funds: A charity may, in its discretion, reserve IOLTA funds from current distribution to stabilize the amounts available for distribution for future years.

Replace:

(a) All reserved funds must be invested in United States Treasury obligations or deposited in fully insured bank accounts.

With:

(a) All reserved funds must be invested in, or fully collateralized by, United States Government securities including United States treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, or, deposited in fully insured bank accounts;

Replace:

(d) No more than 25% of the IOLTA income received by a charity during that charity's fiscal year may be reserved during that year.

With:

(d) No more than 25% of the IOLTA income received by a charity during that charity's fiscal year may be added to that charity's reserve, provided however that in no event may the total reserve maintained by the charity exceed 50% of the average of the current fiscal year's IOLTA revenue to the entity (including interest) and the prior fiscal year's IOLTA revenue to the entity (including interest). Each charity has

two years to comply with fluctuations that may occur as the average figure changes.

Replace:

(e) A charity establishing a stabilization fund shall adopt criteria regarding the amounts to be reserved and the uses of the reserved funds including the circumstances under which the principal of the stabilization fund may be expended.

With:

(e) If an entity's IOLTA reserve exceeds the amount allowed by these guidelines, the IOLTA Committee may withhold the distribution of further IOLTA revenue to the entity by the amount of the excess fund balance;

(f) The IOLTA Committee, in its sole discretion, may waive the provisions of sections (d) or (e) above if it determines that special circumstances warrant a waiver; and

(g) A charity establishing a stabilization fund shall adopt criteria regarding the amounts to be reserved and the uses of the reserved funds including the circumstances under which reserve may be expended.

Replace:

4. Record Keeping: Each charity directly or by contract with another entity shall:

(a) Have its records of IOLTA receipts and disbursements audited annually by a Certified Public Accountant and file a copy of the audit report and the charity's last annual report with the annual report required by Mass R. Prof. C. 1.15(g); and,

(b) Prepare its IOLTA reports based on the charity's fiscal year.

With:

Record Keeping: Each charity directly or by contract with another entity shall:

- (a) Have its records of IOLTA receipts and disbursements audited annually by a Certified Public Accountant and file a copy of the audit report and the charity's last annual report with the annual report required by Mass R. Prof. C. 1.15(g);
- (b) Prepare its IOLTA reports based on the charity's fiscal year; and
- (c) Prepare annual financial statements in which all IOLTA funds (including interest, returns and prior year IOLTA receipts) are accounted for separately. This accounting shall report the entity's IOLTA fund balance at the end of its fiscal year as its "reserve" for that fiscal year.





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3rd Floor  
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Director

February 4, 2009

Christine Burak, Secretary  
SJC Rules Committee  
John Adams Courthouse  
One Pemberton Square  
Boston, MA 02108

RE: Proposed IOLTA Guideline Changes

Dear Ms Burak:

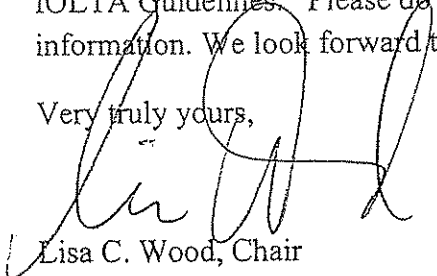
I write on behalf of the Massachusetts IOLTA Committee to report on the request for comments pertaining to our proposed amendments to the Interest on Lawyers Trust Accounts Committee Guidelines (Guidelines) pertaining to the Stabilization Fund.

As you know, in Section 5(a) of the Guidelines, the Committee proposes clearer language about proper investment of IOLTA funds reserved in a stabilization fund. In Sections 5(d), 5(e) and 4(c), the Committee proposes a more complete Guideline regarding the amounts of funds that may be reserved by and how such funds are to be accounted for by the three charities which receive IOLTA funds. In Sections 5(e), 5(f), 4(a) and 4(b), the Committee proposes related procedural changes to reflect the proposed new Guidelines.

The proposed amendments to the Guidelines were published for comment on December 22, 2008 in Massachusetts Lawyers Weekly and online. The deadline for comments was January 22, 2009. No comments were received.

The IOLTA Committee respectfully requests approval of these changes to the IOLTA Guidelines. Please do not hesitate to call if you need further information. We look forward to the Court's response.

Very truly yours,

  
Lisa C. Wood, Chair  
Massachusetts IOLTA Committee

cc: IOLTA Committee  
Jayne Tyrrell